the period May 30, 1971 to December 31, 1973 to that of a floating charge. He contended that the floating charge on the property arose when the two houses, 83 and 85 Cavenagh Road were demolished on May 30, 1971, and continued or subsisted until the end of 1973. He went on to say that when the two notifications of July 1, 1974, one from the Chief Assessor and the other from the Comptroller were sent out simultaneously they operated to quantify the amount due under the floating charge which had arisen immediately on the demolition of the two houses.

But I have already held that the liability to an increased tax does not crystallize until the Comptroller has elected under section 17(7)(b) of the Act and that he did not so elect until July 1, 1974, when he purported to send out his notice. Therefore counsel's contention that the floating charges arose when the two houses were demolished on May 30, 1971 and continued or subsisted until the end of 1973 has no substance and is rejected.

Was the sum of $102,624.15 an outgoing on the said land on July 2, 1973.

I have now to deal with the plea that the sum of $102,624.15 is an outgoing within the meaning of Condition 6. Counsel for the plaintiffs contended that, even if the sum of $102,624.15 were not a first charge on the said land, it could still be an outgoing within the meaning of Condition 6.

Counsel cited the following cases in support of his contention: —

Midgley v. *Coppock;*[1] *Corporation of Sunderland* v. *Alcock;*[2] *In re Bettesworth and Richer;*[3] *Hornsey Local Board* v. *Monarch Investment Building Society;*[4] *Stock* v. *Meakin.*[5]

These cases relate to expenses incurred by some local or other authority in consequence of a vendor failing to comply with a notice of such authority to carry out certain works whereupon the said authority carries out and completes the works before the date for completion of the vendor and purchaser contract. Such expenses were there held to be outgoings. Counsel also cited the case of *Tubbs* v. *Wynne,*[6] the headnote of which reads,

"By conditions of sale of land within the metropolis the date fixed for completion was May 8, all outgoings up to that day being cleared by the vendor. Before May 8 a magistrate made an order to take down dangerous structures on the land. This order was not complied with, and after May 8 the county council took down the structures, and demanded and received from the purchaser the expenses of so doing:—

Held, that, the liability having been incurred before May 8, the expenses were 'outgoings', within the meaning of the conditions, which the purchaser was entitled to recover from the vendor."

In my view all these cases are of no assistance to the plaintiffs. If anything, they go against him.

For there to be an outgoing, either the vendor must have incurred a liability or expense or a local or other authority must have incurred an expense in respect of the property before the date fixed for completion of the sale. In the instant case the sum of $102,624.15 was neither a liability nor an expense which the defendant had incurred in respect of the said land up to the date fixed for completion, namely June 17, 1973. It follows therefore that the sum of $102,624.15 was not an outgoing within the meaning of Condition 6.

Having found that the sum claimed by the plaintiffs is neither an outgoing of, nor an encumbrance on, the said land, I dismiss the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Allen & Gledhill; Khattar, Wong & Partners; J.B. Jeyaretnam & Co.*

MELODIES LTD. v. WONG PENG KIN & ORS.

[O.C.J. (Chua J.) October 23, 1979]
[Singapore — Suit No. 3386 of 1976]

Land Law — Lease for 999,999 years — Building and common property management — Lessors required by authorities to repair retaining wall and divert sewer — Whether lessors could claim contribution in payment from lessees — Environmental Public Health Act, 1968, s. 51(1) — Local Government Integration Act (Cap. 210) — Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951, by-law 14 — Buildings & Common Property (Management) Act 1973, s. 4(1).

Property Management — Lease for 999,999 years — Lessors required by authorities to repair retaining wall and divert sewer — Whether lessors could claim contribution in payment from lessees — Environmental Public Health Act, 1968, s. 51(1) — Local Government Integration Act (Cap. 210) — Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951, by-law 14 — Buildings & Common Property (Maintenance & Management) Act 1973, s. 4(1).

The plaintiffs in the present claim were owners of the land and premises situated at Pasir Panjang Road and Pasir Panjang Hill on which the plaintiffs had erected four blocks of flats. The defendants were the lessees for a term of 999,999 years of the said flat units.

Sometime early in December 1969, due to heavy rain, the drain and retaining wall by the side of No. 43D Pasir Panjang Hill collapsed. The plaintiffs consulted their architects. On December 15, 1969, the plaintiffs wrote to the defendants that measures had to be taken immediately to protect that property in the estate. The plaintiffs suggested that a new wall be erected and that it would cost about $32,000. They requested the contribution of $1,000 immediately from each of the defendants. The response from the defendants was poor and the plaintiffs were unable to proceed with the works. In June 1970 the plaintiffs received a Notice under section 51(1) of the Environmental Public Health Act 1968 from the Chief Building Surveyor requiring the plaintiffs, *interalia,* to erect proper and sufficient shoring to prevent landslides and collapse of the retaining wall. On December 9, 1970, the plaintiffs wrote to the defendant reminding them of their letter of December 15, 1969 and informing them that the plaintiffs had received a Notice from the Public Works Department requesting them to divert the sewer lines in the Estate to connect the Government sewer along Pasir Panjang Road. Because of the poor response from the defendants the plaintiffs wrote to the defendants on July 26, 1971, giving the defendants notice that as from January 1, 1972, they would discontinue the maintenance works for the flats and requesting the defendants to organise themselves into a new management corporation as soon as possible to look after the maintenance works in respect of the flats.

In August 1973 the plaintiffs were served with a Notice under section 2(2) of the Local Government Integration Act (Cap. 210) and By-Law 14 of the Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951 by the P.W.D. requiring the plaintiffs to divert the sewer lines in the Estate to connect to the Government sewer. Several discussions were held with the proper authorities about the build-

ing of the retaining wall, approval to which was finally given. In May 1974 the plaintiffs invited tenders for the erection and completion of the retaining wall, and diversion of sewer from the sewerage treatment plant to connect to the public sewer together with ancillary works.

On September 16, 1974, the plaintiffs wrote to the defendants informing them that "due to the increased cost in the maintenance of the above property we regret we have to exercise our right under clause 6 of the Lease to increase the rent (maintenance fee) to $15 per flat per month with effect from April 1, 1975." The plaintiffs claimed from the defendants a *pro-rata* contribution of the expenditures incurred by them, under clause 4(1) of the leases, plus 10% under clause 2(f) of the leases, and alternatively under clause 2(b) of the leases. In addition the plaintiffs claimed against a number of the defendants miscellaneous sums due under the leases and rental.

Held, allowing the plaintiffs' claims: (1) a covenant by a landlord to repair the demised premises is construed as a covenant to repair on notice and until he has received notice, or has actual knowledge of the want of repair the landlord will not be guilty of any breach of his covenant;

(2) the object of the said lease was to transfer all the liabilities from the plaintiffs to the purchasers; the sewer diversion work was required under By-Law 14 of the Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951 and was not a plaintiffs' covenant.

CIVIL SUIT.

D.H. Murphy (*Miss C.A. Remedios* with him) for the plaintiffs.

Chan Sek Keong for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs are the owners of the land and premises situated at Pasir Panjang Road and Pasir Panjang Hill on which the plaintiffs have erected four blocks of flats (the Estate). The defendants are respectively the lessees for the term of 999,999 years of the flat units described in the Schedule of Particulars annexed to the Amended Statement of Claim.

The plaintiffs claim from the defendants a *pro-rata* contribution of the expenditures incurred by them, under clause 4(c) of the leases, plus 10% under clause 2(f) of the leases, and alternatively under clause 2(b) of the leases. In addition the plaintiffs claim against a number of the defendants miscellaneous sums due under the leases and rental, the particulars of which are set out in paragraph 12 of the Amended Statement of Claim (referred to as Claim *B* in the Schedule of Particulars in the Amended Statement of Claim).

The defendants say that they are not liable to contribute to the alleged expenditures on a *pro-rata* or any other basis under the terms of the leases and that if they are so liable the expenses are excessive and/or unreasonable. With regard to Claim *B* the defendants admit liability but they dispute that the plaintiffs are entitled to raise the rental from $60 per annum to $180 per annum effective from April 1, 1975.

The short facts are these. Sometime early in December 1969, due to heavy rain for a few days, the drain and retaining wall by the side of flat No. 43D Pasir Panjang Hill collapsed. The plaintiffs consulted their architects. On December 15, 1969, the plaintiffs wrote to the defendants informing them of this fact and stating that measures had to be taken immediately to protect the property in the Estate and suggesting that a new retaining wall be erected and that that would cost about $32,000 and requesting the contribution of $1,000 immediately from each of the defendants. The plaintiffs received very poor response from the defendants and they were unable to proceed with the works. In February 1970, a reminder was sent to the defendants. In June 1970, the plaintiffs received a notice under section 51(1) of the Environmental Public Health Act, 1968, from the Chief Building Surveyor calling upon them to abate a nuisance on the Estate and requiring the plaintiffs

"(i) to erect proper and sufficient shoring to prevent landslides and collapse of retaining wall;

(ii) to repair and reconstruct the defective surface drains at front of premises and near the car park;

(iii) to submit building plans through a Registered Architect for the reconstruction and/or erection of a proper reinforced concrete retaining wall;

(iv) to erect or reconstruct the said Reinforced Concrete Retaining wall immediately after the approval of the Building Plan."

On December 9, 1970, the plaintiffs wrote to the defendants reminding them of their letter of December 15, 1969, and informing them that the response from the defendants was very poor and that they (the plaintiffs) had received a notice from the Public Works Department requesting them to divert the sewer lines in the Estate to connect to the Government sewer along Pasir Panjang Road. The plaintiffs continued:

"In view of this and the urgency in having the retaining wall reinforced we wish to appeal to you to reconsider the matter again urgently. If you are agreeable to entrust the work to us, please confirm by writing that you will be agreeable to contribute proportionately the costs involved.

We estimate that the costs will be as follows:-

Repair to retaining wall	$40,000/-
Diversion of minor sewer	$10,000/-
	$50,000/-

The above estimates are mere estimates from us to serve as an indication of the cost at present market conditions. You will note that the cost of construction has increased substantially and it is unlikely to reinforce the retaining wall at the original estimate of $32,000/-.

If you agree to contribute proportionately, we shall instruct our architects, to call tenders and the tenders will be opened after you are notified."

Because of the poor response from the defendants the plaintiffs wrote to the defendants on July 26, 1971, giving the defendants notice that as from January 1, 1972, they would discontinue the maintenance works for the flats and requesting the defendants to organise themselves into a new management corporation as soon as possible to look after the maintenance works in respect of the flats. On August 1, 1973, the plaintiffs wrote to the defendants asking them to attend a meeting to be held at a local hotel on August 8, 1973, to discuss (1) the sewer diversion required to be done by the P.W.D.; (2) the retaining wall, car park and painting required to be done by the Commissioner of Buildings. Only three of the defendants attended and the meeting could not proceed. In August 1973, the plaintiffs were served with a notice under section 2(2) of the Local Government Integration Act (Cap. 210) and By-Law 14 of the Municipal (Private Sewage Purification Plants and Chemical Closet) By-Law 1951 by the

P.W.D. requiring the plaintiffs to divert the sewer lines in the Estate to connect to the Government sewer. The plaintiffs then discussed with the proper authorities about the building of the retaining wall. The plaintiffs proposed the building of an earth embankment instead of a long retaining wall of about 240 ft. The discussions took place over a period of several months. Finally approval was given by the proper authorities for the building of an earth embankment and the construction of a retaining wall of about 10 ft. The plaintiffs then through their architects invited tenders in May 1974, for the erection and completion of R.C. retaining wall, diversion of sewer from the sewerage treatment plant to connect to the public sewer together with ancillary works. Eventually the tender of Tai Kheng Private Ltd. (Tai Kheng), for $99,500 was accepted. The plaintiffs had to proceed with the work or face prosecution as the matter had been delayed since 1969 and they had been served with notices from the Commissioner of Buildings under section 4(1) of the Buildings & Common Property (Maintenance & Management) Act 1973. The plaintiffs also asked Tai Kheng to do the earth embankment with close turfing and level the car park and repair the drains for $65,900. The resurfacing of the car park was done by Guan Chwee Construction for $3,040.60 in 1975.

On September 16, 1974, the plaintiffs wrote to the defendants informing them that "due to the increased cost in the maintenance of the above property we regret we have to exercise our right under clause 6 of the lease to increase the rent (maintenance fee) to $15 per flat per month with effect from April 1, 1975."

The plaintiffs say that they are entitled to recover from the defendants a *pro-rata* contribution of the following expenditures incurred under clause 4(c) of the leases plus 10% under clause 2(f) of the leases: —

(a)	Sewer diversion (under clause 4(c)(ii))	$ 99,500.00
(b)	Earth embankment with close turfing (under clause 4(c)(i))	65,900.00
(c)	Car park repairs & maintenance (under clause 4(c)(iv))	3,040.60
(d)	Surveying & demarcation fee (under clause 4(c)(ii))	180.00
(e)	Plan fee (under clause 4(c)(ii))	12.00
(f)	Engineers' Professional fees (under clause 4(c)(ii))	4,125.00
		$172,757.60

The plaintiffs claim from each defendant under this claim (referred to as Claim *A* in the Schedule of Particulars in the Amended Statement of Claim) the sum of $5,938.54 worked out as follows: —

Expenses incurred	$172,757.60
Plus 10%	17,275.76
	$190,033.36
1/32 share for each flat	$ 5,938.54.

Alternatively the plaintiffs claim under clause 2(b) of the leases the following: —

(i) Sewer diversion	$ 99,500.00
(ii) Earth embankment with close turfing	65,900.00
(iii) Surveying & demarcation fee	180.00
(iv) Plan fee	12.00
(v) Engineers' Professional fees	4,125.00
	$169,717.00

Alternatively the plaintiffs claim under clause 2(c) of the leases, the car park repairs and maintenance 3,040.60

and under clause 2(f) of the leases 10% of $3,040.60 304.00

$173,061.60

1/32 share for each flat $ 5,408.18.

The plaintiffs say that under clause 1 of the leases each of the defendants was liable to pay an annual rent of $60 per annum in advance on the first day of January and every year and by clause 6 of the said leases the plaintiffs were entitled to increase the said rents. They have given the required notice in writing under clause 6 of the leases of the increase of the rent to $15 per month per flat with effect from April 1, 1975. The plaintiffs say that thirteen of the defendants failed to pay the said increase of rent and they now claim from them.

Under clause 4(c) of the leases, the plaintiffs covenanted as follows: —

"That the Company (meaning the plaintiffs) will maintain repair redecorate and renew (i) the main structure and in particular the roof gutters and rain-water pipes of the Estate (ii) the gas and waterpipe drains, sewer lines and septic tank and electric cables in under and upon the Estate and enjoyed or used by the purchaser in common with the owners and lessees of the other flats (iii) the main entrances passages landings and staircases of the building of which the flat forms part so enjoyed or used by the purchaser in common as aforesaid and the paths and roadways leading thereto (iv) the car park enjoyed or used by the purchaser in common as aforesaid."

Under clauses 2(b) and 2(f) of the leases the defendants covenanted with the plaintiffs as follows: —

"2(b) To pay all rates taxes assessments charges impositions and outgoings which may at any time during the terms hereby granted be assessed charged or imposed upon the flat or the owner or occupier in respect thereof and in the event of any rates taxes assessments charges impositions and outgoings being assessed charged or imposed in respect of the assessment or any part thereof to pay a proper proportion of such rates taxes assessments charges impositions and outgoings attributable to the flat.

2(f) Forthwith on demand to repay all reasonable expenses (plus 10%) incurred by the company (meaning the plaintiffs) in executing any repairs or work under sub-clause (e) of this clause and sub-clause (c) of Clause 4 including such repairs or work ought to have been done by the purchaser in accordance with sub-clause (a) of Clause 3 and in case of any differences as to the amount of such expenses attributable to repairs or work within this sub–clause such difference shall be referred to arbitration in accordance with Clause 8 hereinafter contained."

Clause 6 of the leases provides:

"Provided further and it is hereby agreed that if the rent herein before reserved shall at any time amount to less than 110% of the total cost to the Company of carrying out the covenants on its part more particularly set out in Clause 4 hereof the Company shall be entitled upon giving not less than six months notice in writing to increase the said rent provided that the said rent after such increase shall not exceed 140% of such cost as aforesaid and provided also that no such revision shall take place under the expiration of five years from the date hereof and thereafter shall not take place more often than once in every period of five years."

The defendants have admitted liability for the sums claimed under Claim *B* except the annual maintenance fee of $180. Counsel for the defendants submits that the claim for the $180 maintenance fee should be dismissed for the following reasons:

(1) This maintenance fee is payable yearly in advance on January 1 of every year (clause 1). In order to increase this fee the plaintiffs must satisfy the requirements of clause 6. When the notices dated September 16, 1974, were sent out to the defendants they purported to take effect from April 1, 1975. That is not in accordance with clauses 1 and 6 because the increased fee can only take effect on the first day of the year.

(2) When the notice was sent out the total costs incurred by the plaintiffs did not amount to 110% of the fee.

(3) The notice was also wrong because the calculations given to the defendants to justify the increase were based on eight months' expenditure.

(4) The plaintiffs have sought to justify their calculation by introducing ¼ salary of Tan Yeo Gee (who was employed by the plaintiffs as estate supervisor at salary of $600 p.m.).

There is no substance in this submission. Clause 6 provides that in certain circumstances the plaintiffs can give six months' notice of the increase and it does not say they must do it in January. The plaintiffs have clearly justified the increase. Clauses 1 and 6 have not been infringed.

The defendants have denied the plaintiffs' claim made under clause 4(c) read with clause 2(f) of the leases on the ground that a claim under clause 4(c) can be made only if the plaintiffs have performed their covenants under clause 4(c). Counsel for the defendants submits that the evidence is clear that the plaintiffs have never performed their covenants under clause 4(c).

Counsel for the defendants have not pointed out the evidence which would show that the plaintiffs never performed their covenants. Counsel merely relies on the statutory notices sent to the plaintiffs to compel them to do the works in order to show that the plaintiffs did not do the works initially.

The defendants have not brought any evidence to show that the plaintiffs were in breach of their covenants. The evidence adduced by the plaintiffs shows that they have done the work despite the difficulties they had to face from the Government departments, poor response from the contractors, the nature of the work and the complete lack of interest of the defendants themselves.

Counsel for the defendants says that the plaintiffs had undertaken with the sanitary authorities to divert the sewer as far back as 1961. In 1970 the plaintiffs received a notice from the P.W.D. requesting them to divert the sewer line. From 1970 to 1974 the plaintiffs did nothing to divert the sewer. Instead of proceeding to divert the sewer the plaintiffs asked the defendants to contribute and because the defendants did not agree to contribute the plaintiffs refused to carry out the work. Counsel submits that that is a clear breach on the part of the plaintiffs because the defendants at that time were under no obligation to pay the contributions and nothing was done for 4 years. In my view there was no breach of covenant by the plaintiffs as the statutory notice in respect of the sewer did not arise from disrepair of any sort.

Counsel for the defendants says that the plaintiffs instead of proceeding to repair the embankment, after it collapsed at the end of 1968, requested the defendants to pay their contribution first and because only two or three of the defendants paid the plaintiffs refused to carry on the work. This dragged on until July 1973, when the work was put in hand. Counsel submits here again the plaintiffs have breached their covenant.

A covenant by a landlord to repair the demised premises is construed as a covenant to repair on notice and until he has received notice, or has actual knowledge of the want of repair the landlord will not be guilty of any breach of his covenant. (See Vol. 23, *Halsbury's* Laws of England Third Edition page 587 para. 1269).

In this case the plaintiffs, when they were informed in 1968 by one of the defendants (Lim Kay Woon) that the retaining wall was about to collapse, sent someone to reconstruct the drain and erect some timber poles to support the retaining wall. The plaintiffs on notice of the landslide in December 1969, contacted and consulted their architects. The plaintiffs also contacted the defendants to obtain their views and reactions on the question of their contribution for the costs of the works. This is not unreasonable on the part of the plaintiffs as the defendants were ultimately liable to pay for the works which were to be carried out. The plaintiffs were also trying all means to economize on the earth embankment work. They discussed with the proper authorities on the matter. The proper authorities wanted the plaintiffs to put up a retaining wall of 240 ft. The plaintiffs suggested an earth embankment instead of a retaining wall to save costs. The discussion took a long time and eventually the plaintiffs received approval to construct an earth embankment with a 10 ft. retaining wall. I find that at no time did the plaintiffs sit back and refused to do anything once they were aware of the repairs that were required.

I reject the defendants' defence to claim *A* made under clauses 4(c) and 2(f) of the leases, based on the allegation that the plaintiffs never performed their covenants under claim 4(c).

Counsel for the defendants submits that the plaintiffs are not entitled to recover claim *A* under clause 2(b), for these reasons. Counsel for the defendants

submits that the defendants' covenant under clause 2(b) cannot cover every expenditure incurred by the plaintiffs and that it must be read subject to clause 4(c) where the plaintiffs have covenanted to perform the matters stated therein. The argument of counsel is that the covenant by the defendants to pay "impositions and outgoings" in clause 2(b) must be read with clause 4(c) to determine whether what the plaintiffs had done in pursuance to the statutory notice were "impositions and outgoings". Counsel submits that where in a lease the lessor has covenanted to carry out certain obligations then as a matter of construction of the lease the lessees covenant to pay "impositions and outgoings" cannot refer to the same obligations in respect of which the lessor is required to carry out under statutory notices.

Counsel for the defendants submits that as regards the expenditure incurred by the plaintiffs for the diversion of the sewer line the expenditure incurred was charged or imposed on the plaintiffs before any of the leases came into effect and that the expenditure was part of the obligation of the plaintiffs as owner under By-law 14 of the Municipal (Private Sewage Purification Plants & Chemical Closets) By-Laws 1951. Counsel further submits that this charge was not attributable to the flat but to the failure of the plaintiffs to carry out their obligations.

As regards the expenditure incurred by the plaintiffs for the earth embankment work, counsel for the defendants submits that that is a charge on the plaintiffs as the owners of the common property. Counsel says it is clear that the defendants have no property whatsoever in the embankment as they have only a 999,999-year lease in the flat and that the notice of December 6, 1973, from the Commissioner of Building under section 4(1) of the Building & Common Property (Maintenance & Management) Act, 1973, constituted a charge on the plaintiffs as the owners of the common property.

I am unable to agree with the submissions of counsel for the defendants. The defendants bought the flats and they are owners of the flats and they are expected to do everything and pay everything. It is obvious that the object of the leases is to transfer all the liabilities from the plaintiffs to the purchasers. The sewer diversion work was required under By-Law 14 and is not a plaintiffs' covenant. The cases cited by counsel for the defendants were all short term leases (three to twenty-one years) and in some cases two covenants fell to be construed, whereas in the present case only one covenant falls to be construed. Those cases do not assist the defendants' case. It appears to me that the wording of clause 2(b) is wide enough to cover the sewer diversion work and at the time when the covenant was entered into the possibility of such work being carried out would I think clearly be within the contemplation of the parties to the covenant.

The defendants complain that the expenditures for the sewer diversion and the earth embankment were excessive and/or unreasonable.

Counsel for the defendants says that the $99,500 tender of Tai Kheng for the sewer diversion work was not a proper tender in that it was a private arrangement between the plaintiffs and Tai Kheng and that as regards the embankment work the plaintiffs gave the contract to Tai Kheng for $65,900 without calling for tenders. Counsel says that Tai Kheng could not explain satisfactorily how they arrived at the figures of $99,500 and $65,900. Counsel submits that in these circumstances the tender for $99,500 and the contract for $65,900 were not *bona fide* but were mere private arrangements between the plaintiffs and Tai Kheng.

Counsel for the defendants submits that, if the defendants are liable, the claims for the sewer diversion work should only be $10,000 and for the embankment work $32,000 (these were the initial quotations of the plaintiffs) and if the court is not inclined to accept the plaintiffs' initial quotations, then the court should accept the evidence of the defendants' witness, Denis J. Krist, a chartered Quantity Surveyor, that the sewer diversion work should cost $40,280 and the earth embankment work $15,267.

I am unable to accept the submissions of counsel for the defendants. The evidence adduced by the plaintiffs showed clearly that at all times the plaintiffs had been striving to save costs. The question of the earth embankment work arose first in 1969 and the first statutory notice was in 1970. The sewer diversion work only arose in August 1973. While the plaintiffs were trying to get the Commissioner of Buildings to allow them to do the embankment work instead of the 240 ft. retaining wall, the sewer diversion work arose and formal plans had to be submitted in respect of both works. The works took so long as certain amendments had to be made to the drawings due to site conditions and approval for the changes had to be obtained from the proper authorities. The works took so long because of the difficult nature of the works due to site conditions — the slope, stabilising the earth around it and the different levels — which affected both the sewer and the embankment. The sewer work affected the embankment and the embankment work affected the car park. The embankment work had to be completed before the work on the car park could commence. Thus the delay was not unreasonable or intentional. Many contractors were not interested in the works after they had seen the site conditions. The quotation of $32,000 by the plaintiffs on December 15, 1969, for the retaining wall was not a tender price but it was based on a preliminary proposal to erect a short retaining wall just to stop the tilting and stabilise the ground near the existing retaining wall and the calculation was done by Lee Chin Chuan, the Managing Director of the plaintiff company. The estimate of $10,000 given by the plaintiffs on December 9, 1970, for the sewer diversion work was again the estimate of Lee Chin Chuan. There was an intention to have a competitive tender but the plaintiffs had difficulty in getting contractors to tender. The defendants and their friends were invited to tender but they did not. It is understandable why Tai Kheng cannot explain in detail the breakdown of the tender as it was a lump sum tender. The plaintiffs had done all they could do. They called for tenders, they invited the defendants or their friends to tender and they gave the work to the only con-

tractor who was prepared to accept the job at a time when there was a building boom and other contractors preferred other jobs than the jobs in question. I cannot rely on the evidence of the defendants' witness Krist that the sewer diversion work should cost $40,280 and the earth embankment work $15,267. He did not visit the site to see the difficult terrain. He could of course work out the quantities of earth and filling required from the plans produced by the plaintiffs' architects but he based his costs on other tenders and I do not know if they were accepted tenders.

In the result the plaintiffs have proved their claim. The following sums are due from all the defendants:

A. Under clause 2(b) of the leases: —

(i) Sewer diversion	$ 99.500.00
(ii) Surveying & demarcation fee	180.00
(iii) Plan fee	12.00
(iv) Engineers' professional fees	4,125.00

B. Under clause 4(c) of the leases: —

(i) Earth embankment with close turfiing	65,900.00
(ii) Car park repairs and maintenance plus 10% under clause 2(f) of the leases.	3,040.60

The defendants, set out in paragraph 11 of the amended statement of claim, must pay the plaintiffs the increase of rent as shown in paragraph 12 of the amended statement of claim.

The plaintiffs will have judgment with interest and costs.

Claim allowed.

Solicitors: *Donaldson & Burkinshaw; Shook Lin & Bok.*

THE GREAT EASTERN LIFE ASSURANCE CO. LTD. v. GOH AH KOW t/a SINGAPORE DRY CLEANERS & ANOR.

[D.C.A. (Rajah J.) October 25, 1979]

[Singapore — District Court Appeal No. 2 of 1978]

Landlord & Tenant — Rent-controlled premises — Claim for possession — Whether second and third defendants in unlawful occupation of premises — Control of Rent Act (Cap. 266), ss. 3(1), 7 & 27(a) — Increase of Rent and Mortgage Interest (Restrictions) Act (U.K.), s. 3(1).

This appeal arose from a claim by the plaintiffs in the District Court against the first, second and third defendants for possession of premises known as No. 204 Orchard Road, Singapore. The said premises were controlled premises and they were let to the first defendant sometime during the Japanese Occupation.

The plaintiffs alleged that by a Notice to Quit dated February 22, 1952 the contractual tenancy of the first defendant was terminated on March 31, 1952, and that the Rent Conciliation Board had granted approval for the increased rent of $120 per mensem effective from April 1952. The plaintiffs claimed that the first defendant thereafter continued occupation of the said premises as a statutory tenant. The plaintiffs also alleged that by a Notice to Quit of November 2, 1976, the statutory tenancy of the first defendant was terminated on December 31, 1975. The plaintiffs claimed possession against the first defendant under section 27(a) of the Control of Rent Act, on the ground that the defendant was not in occupation of the premises and against the second and third defendants on the ground that they were unlawfully in occupation. On September 10, 1977, the first defendant consented to judgment. The trial then proceeded against the second and the third defendants.

The facts revealed that the second defendant had gone into occupation of the said premises towards the end of 1945 and that the third defendant was occupying part of the said premises, rent free, since 1959 after he had married the second defendant's daughter.

The learned district judge dealt with the five main issues and gave the respective answers: 1) that the second defendant was not an assignee of the first defendant but that he was occupying the premises by leave and licence of the first defendant; 2) that there had been created a new contractual tenancy, with effect from May 1, 1952, between the plaintiffs and the first defendant in respect of the premises at a new monthly rental of $120; 3) that the subsisting contractual tenancy of the first defendant had not been determined on December 31, 1976 as the plaintiffs had not proved that the second Notice to Quit had been served on the first defendant; 4) that the second and third defendants were in the circumstances of the instant case lawfully in occupation of the said premises; 5) that merely obtaining a consent judgment against the first defendant could not in the circumstances of this case enable the plaintiffs to obtain judgment against the second and third defendants.

Held, dismissing the appeal: once the second and third issues had been decided against the plaintiffs it follows that the plaintiffs had no cause of action against the first defendant either at the time of the issue of the summons or when the latter suffered judgment against himself and the fourth and fifth issues become irrelevant in determining the question whether the plaintiffs had proved their claim for possession against the second and third defendants.

Cases referred to:

(1) *Lum See On* v. *Chan Kit Yong* [1956] M.L.J. 40.

(2) *Summers v. Donohue* [1945] 1 All E.R. 599.

(3) *Kerr* v. *Bryde* [1923] A.C. 16.

(4) *Glossop* v. *Ashley* [1921] 2 K.B. 451 @ 456.

DISTRICT COURT APPEAL.

Kirpal Singh for the appellants.

Tommy S.T. Neo for the respondents.

Cur. Adv. Vult.

Rajah J.: This is an appeal which arises from a claim brought by the plaintiffs in the District Court against the 1st, 2nd and 3rd defendants for possession of premises known as No. 204 Orchard Road, Singapore. It was not in dispute that the premises are controlled premises and that they were let to the 1st defendant sometime during the Japanese Occupation.

The plaintiffs alleged that by a Notice to Quit dated February 22, 1952 the contractual tenancy of the 1st defendant was terminated on March 31, 1952, and that the Rent Conciliation Board had granted approval for the increased rent of $120 per mensem effective from April 1, 1952. The plaintiffs further alleged that the 1st defendant thereafter continued occupation of the said premises as a statutory tenant. The plaintiffs also alleged that by a second Notice to Quit, dated November 2, 1976, which was served by registered post at the said premises, the statutory tenancy of the 1st defendant was terminated on December 31, 1975. The plaintiffs claimed possession against the 1st defendant under section 27(a) of the Control of Rent Act, that is to say on the grounds